

## REMARKS

### 1. Status of claims

Claims 1-17 are pending.

### 2. Claim rejections under 35 U.S.C. §112

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Claims 1-17 are rejected under 35 U.S.C. §112, first paragraph, as containing new matter, specifically the terms "providing substantially all of the interior surface of the rigid container" and "substantially coextensive." Applicants respectfully traverse this rejection.

As Applicants pointed out in the remarks included with the preliminary amendment dated May 9, 2002 and filed with the RCE, these terms find support in the specification at p. 8, lines 24-28; p. 11, lines 2-26; p. 12, lines 4-6; and Examples 2-10. This support is not verbatim; however, it is well established the subject matter of a claim need not be described literally (MPEP 2163.02). In the various embodiments disclosed, such as the at least three layer structure described at p. 11, lines 2-26, one of ordinary skill in the art would recognize that these embodiments inherently have the properties recited by the terms in question. The application as filed necessarily disclosed these properties, which is well established as providing a basis for an amendment supported by the original description (MPEP 2163.07(a)). Therefore, Applicants request this rejection of claims 1-17 be withdrawn.

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Second, claims 1-17 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite for reciting the term "substantially." Applicants respectfully traverse this rejection.

One of ordinary skill in the art would understand the term "substantially all of the interior surface" of a container as referring to the entire interior surface with the possible exceptions of manufacturing imperfections; seams or other artifacts of the manufacturing process; lids, caps,

and other seals typically made of materials other than the material of which the container is primarily made; or sachets or other inserts desired for a specific use by the packager. Also, one of ordinary skill in the art would understand the term "substantially coextensive," as it concerns two adjacent layers, as meaning that the two layers have about the same surface area and the entirety of a surface of each layer is in contact with the entirety of a surface of the other layer, with the possible exception of the edges of the two layers (such as, in a container, along the rim of the container's mouth) or manufacturing imperfections which lead to the formation of lacunae in one, the other, or both layers.

Applicants maintain these terms are clear, and that this rejection of claims 1-17 should be withdrawn.

### 3. Claim rejections under 35 U.S.C. §103

First, claims 1-12 and 16-17 are rejected under 35 U.S.C. §103(a) as being unpatentable over Ching, U.S. Pat. No. 5,744,246 ("Ching") in view of Nordstrom, U.S. Pat. No. 3,536,687 ("Nordstrom"), for reasons made of record in Papers No. 8 and 14. Applicants respectfully traverse this rejection.

Ching is directed to an oxygen scavenging ribbon and its use in preexisting containers (col. 8, line 62-col. 9, line 7). The ribbon and the container are prepared separately and then are combined into one structure (Examples 3-4). Ching points to the benefits of this approach as providing oxygen scavenging properties to preexisting containers.

The present claims are directed to containers comprising at least three layers, as set forth in claim 1, wherein the core layer comprises an oxygen scavenging polymer comprising cyclic olefinic pendant groups. In distinction to Ching, the containers of the present invention have the

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oxygen scavenging material incorporated in the container during the formation of the container. This provides a benefit over Ching, in that, whereas Ching teaches a three-step process (forming a container, forming the ribbon, and combining the container and the ribbon), the present invention is the product of a one-step process (forming a container comprising an oxygen scavenging layer). This would simplify the forming process in the factory and would be expected to lower capital costs and provide related benefits.

In light of this point, Nordstrom's teaching of polymers with cyclohexenyl pendant groups is moot. Nordstrom does not direct one of ordinary skill in the art to a container comprising an oxygen scavenging layer. Therefore, Applicants maintain claims 1-17 are patentable over Ching and Nordstrom, and this rejection should be withdrawn.

Second, claims 13-15 are rejected under 35 U.S.C. §103(a) as being unpatentable over Ching and Nordstrom, further in view of Katsumoto et al., U.S. Pat. No. 6,139,770 ("Katsumoto"). The references are as discussed in Papers No. 8 and 14. Applicants respectfully traverse this rejection.

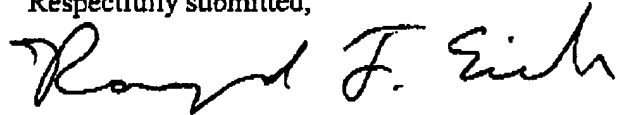
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Katsumoto was cited by the Examiner because it discusses photoinitiators, and supplements Ching and Nordstrom in this regard. Katsumoto refers to a number of oxygen scavenging systems at col. 7, lines 24-35, in which an oxygen scavenging material is introduced in the system by forming into a film, forming into a bottle, coating onto a material, lamination onto a material, incorporating into paper, and localizing as a patch on another layer. However, Katsumoto does not direct one of ordinary skill in the art to the specific three-layer structure of the present claims, and its combination with Ching and Nordstrom neither teaches nor suggests the present claims. Therefore, Applicants maintain claims 1-17 are patentable over Ching, Nordstrom, and Katsumoto, and this rejection should be withdrawn.

4. Final comments

In conclusion, Applicants maintain all pending claims 1-17 are in condition for allowance. The Examiner is invited to contact the undersigned patent agent at (713) 934-4065 with any questions, comments or suggestions relating to the referenced patent application.

Respectfully submitted,



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